STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

Opinion No. 5200

May 24, 1977

ELECTIONS:

Date of receipt of qualifying contributions.

STATE CAMPAIGN FUNDS:

Date of receipt of qualifying contributions.

Contributions made to a candidate's committee in accordance with 1976 PA 388 after April 1, 1977 and prior to June 1, 1977 are eligible for state matching funds if the candidate's committee files its statement of organization up to and including July 1, 1977.

Mr. Richard H. Austin

Secretary of State

Michigan Department of State

Treasury Building

Lansing, Michigan

You have requested my opinion on the following questions:

> '1. Should the Secretary of State consider contributions made after April 1, 1977, and prior to the filing of a statement of organization, as 'qualifying contributions' even though a statement of organization cannot be filed until June 1, 1977?
>
> '2. May the apparently inconsistent provisions of the act be clarified by promulgating administrative rules allowing such contributions to be considered 'qualifying contributions' if the candidate has submitted (as opposed to filed) a statement of organization to the proper filing officer? This would presuppose the administrative rules could be promulgated by April 1, 1977.
>
> '3. What should be the position of the Secretary of State if administrative rules are promulgated at a date subsequent to April 1, 1977, but prior to June 1, 1977?'

1976 PA 388; MCLA 169.201 et seq; MSA 4.1703(1) et seq, was enacted by the legislature to regulate the financing and reporting of political campaign receipts and expenditures, to provide for the use of public funds for political purposes, and to otherwise regulate political activity. Although the legislature gave immediate effect to 1976 PA 388, supra, it

expressly provided that Sections 21 to 34, Sections 36 to 55, and Section 81 were not to be effective until June 1, 1977 and Section 35 was not given effect until June 30, 1978. Further, the penalty provisions of 1976 PA 388, supra, were delayed so as not to apply to any act or omission occuring before December 1, 1977. 1976 PA 388, supra, Sec. 82.

For purposes of the Act, the legislature has defined the term 'qualifying contributions' in 1976 PA 388, supra, Sec. 12(1) to mean a contribution of money of not more than $100 made by a written instrument by a person other than the candidate or the candidate's immediate family if it is made to the candidate committee of a candidate for the office of governor after April of the year preceding a year in which a governor is to be elected. 1976 PA 388, supra, Sec. 3(2) defines the term 'candidate committee' to mean the committee designated in a candidate's filed statement of organization as that individual's candidate committee. These two statutory provisions, while definitional in nature, were immediately effective on December 30, 1976.

In 1976 PA 388, supra, Sec. 21(1), not effective until June 1, 1977, the legislature has imposed a duty upon a candidate to form a candidate committee. The campaign committee so formed must comply with 1976 PA 388, supra, Sec. 24(1), which in pertinent part provides:

> 'A committee shall file a statement of organization with the filing officials designated in section 36(1) to receive the committee's campaign statements. A statement of organization shall be filed within 10 days after a committee is formed. A committee in existence at the effective date of this section shall file a statement with the appropriate filing officials within 30 days after the effective date of this section.' [Emphasis supplied.]

These provisions are likewise not effective until June 1, 1977.

The copy of the campaign statement of the candidate committee for a candidate for the office of governor shall be filed with the Secretary of State and with the clerk of the county of residence of the candidate as required by 1976 PA 388, supra, Sec. 36(1). This provision is also effective June 1, 1977.

The legislature has also made provision for the public financing of the campaigns for certain public offices in 1976 PA 388, supra, Secs. 61 through 71. Basically, these provisions create a state campaign fund to be comprised of sums credited against individual income tax liability by designation of the taxpayer for the fund. Candidates for the office of governor raising not less than 5 percent of the designated spending limit of $1,000,000 for the office of governor for the primary election, may receive from the state campaign fund an amount equal to $2 for each $1 of such qualifying contributions subject to certain conditions. In the general election the candidate may receive $1 for each $1 of qualifying contributions. One of these conditions is found in 1976 PA 388, supra, Sec. 62(1), which provides, in pertinent part, as follows:

> 'Only a candidate who established a single candidate committee which submitted a statement of organization according to procedures established by law may receive moneys under this act. . . .'

It must be observed that 1976 PA 388, Secs. 61 through 71, supra, are not effective until June 1, 1977.

The legislature has also delayed the effectiveness of 1976 PA 388, supra, Sec. 81(1) specifically repealing, inter alia, 1954 PA 116, Sec. 905; MCLA 168.905; MSA 6.1905, providing that no person who was not a candidate or the treasurer of the political committee shall pay, give, or lend or agree to do so, contribute any money for any election expenses except to a candidate or political committee. The repeal is effective June 1, 1977. Thus, the present law allows a candidate for governor to form a political committee to receive political contributions after April 1, 1977.

The fact that the legislature gave immediate effect to some but not all of these provisions lends the statute an ambiguous character more apparent than real. The primary rule of statutory interpretation is to ascertain and give effect to the intention of the legislature. Dussia v Monroe County Employees Retirement System, 386 Mich 244; 191 NW2d 307, aff'g 27 Mich App 398; 183 NW2d 583 (1971). Legislative intent is to be ascertained not from a particular expression or provision, but from a reading of the whole statute in light of the general purpose sought to be accomplished. Thus, it is necessary to give effect to every word, sentence and section with a view of wherever possible producing a harmonious and consistent whole enacted statute. City of Grand Rapids v Crocker, 219 Mich 178; 189 NW 221 (1922), Mason County Civil Research Council v Mason County, 343 Mich 313; 72 NW2d 292 (1955), Roberts Tobacco Co v Department of Revenue, 322 Mich 519; 34 NW2d 54 (1948).

Applying these principles, it is necessary to read 1976 PA 388, Sec. 3(2), 12(1), 21(1), 24(1), 36(1) and 62(1), supra, together in light of the purposes of the Act. In doing so, the legislative intent becomes manifest. In order for contributions to be considered 'qualifying contributions' they must be made after April 1 of the year preceding a year in which a governor is to be elected. The contributions must be by a written instrument by a person other than the candidate or the candidate's immediate family made to the candidate committee of a candidate for the office of governor in an amount which is $100 or less. The candidate committee is required to file a statement of organization within 10 days after a committee is formed, except that 'a committee in existence' on June 1 of 1977, the effective date of 1976 PA 388, Sec. 24(1), supra, shall file a statement with the Secretary of State and the county clerk of the county of residence of the candidate within 30 days after June 1, 1977. By incorporating this precise statutory language into 1976 PA 388, Sec. 24 (1), supra, the legislature has evidenced its clear intent that a candidate committee can be formed prior to June 1, 1977 to receive qualifying contributions after April 1, 1977, the year preceding the year 1978 when the governor is to be elected. 1976 PA 388, Sec. 12(1), supra. While such a candidate committee is not mandated by the legislature through express provision of 1976 PA 388, supra, prior to June 1, 1977, when Section 24(1), supra, thereof becomes effective, such committees are presently authorized by 1954 PA 116, Sec. 905, supra. This provision is presently operative and will not be repealed until June 1, 1977. 1976 PA 388, Sec. 81(1), supra.

Such a reading of 1976 PA 388, supra, is consonant with the statutory provision that only a candidate who established a single candidate committee which submitted a statement of organization according to procedures established by law may receive monies under this Act. 1976 PA 388, Sec. 62(1), supra. The only monies that may be received under this Act are those provided for in 1976 PA 388, Secs. 61 through 71, supra, from the state campaign fund. A candidate for the office of governor who announces his candidacy and forms a candidate's committee after April 1, 1977 and prior to June 1, 1977 will be eligible to receive monies from the state campaign fund if his candidate committee files a statement of organization within 30 days after June 1, 1977, the effective date of 1976 PA 388, Sec. 24(1), supra, provided that the candidate's committee receives a sufficient amount of 'qualifying contributions' after April 1, 1977 and otherwise complies with the Act.

It is, therefore, my opinion that the Secretary of State shall consider contributions made after April 1, 1977 as 'qualifying contributions' in accordance with 1976 PA 388, Sec. 12(1), supra, even though the candidate's committee does not file its statement of organization up to and including July 1, 1977. The answer to your first question is in the affirmative.

The answer to your first question makes it unnecessary for me to consider your remaining questions.

Frank J. Kelley

Attorney General

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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 26, 1977

Mr. James R. Killeen
Wayne County Clerk
Detroit, Michigan 48226

Attention: Orville L. Tungate
Chief Deputy County Clerk

Dear Mr. Killeen:

This is in response to your letter of June 17, 1977, requesting a declaratory ruling regarding the mailing of notices by registered mail pursuant to P.A. 388 of 1976 ("The Act").

Your letter quotes MCLA §8.11, a statute of general statutory construction. This provision states that wherever the words "registered mail" are used in any statute of the state of Michigan, they may be interpreted as "certified mail." Your question is whether this statute applies to the Act so that notices required to be sent by registered mail may be sent by certified mail instead.

The Department of State has considered and discussed a substantive response to your ruling request but has concluded that a declaratory ruling would be inappropriate under Section 15(1)(e) of the Act and R.169.6. The latter rule, promulgated pursuant to the Act, provides in part that declaratory rulings must concern the applicability of the Act or rules to an actual statement of facts. Your question actually concerns the applicability of another act to this Act, for which a declaratory ruling would not be suitable.

However, the Department's reading of MCLA §8.11, as administrative supervisor of the Act and as a filing official, is that the statute in question does apply to Section 16(6) of the Act. This viewpoint is based in part upon an Attorney General's letter opinion to the Secretary of State, dated April 27, 1973, wherein the Attorney General stated a particular statute of general statutory construction applies to the Motor Vehicle Code. Analogously, the statute of general construction in question applies with equal force of law to the Campaign Finance Act.

Consequently, whenever "registered mail" is required by the Act for notices of "errors or omissions," the use of certified mail by a filing official shall be in compliance with the Act. It should be noted that the Department has

found certified mail would be less expensive and more rapid than registered mail, while entailing no sacrifice of legislatively contemplated safeguards for legal notice.

It should be stated the Act in Section 16(6) only mandates registered or certified mail for notices of "errors or omissions" in a filed statement or report. Notices of failure to file need not be sent by registered or certified mail. However, the Department highly recommends, if registered or certified mail is not used for the latter, the filing official maintain some form of record or log that the notice was sent in the event the notice is questioned. For example, a log may be kept recording notices by telephone or, more effectively, an affidavit of mailing might be maintained for each notice sent by first class mail.

The same conclusion is reached with respect to the use of registered mail in Section 16(9) of the Act. Certified mail may be used in place of registered mail by filers.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:mc

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 26, 1977

The Honorable Francis R. Spaniola
House of Representatives
State Capitol
Lansing, Michigan

Dear Representative Spaniola:

This letter is pursuant to your telephone conversation of July 11, 1977 with a member of my staff and in response to your letter of July 1, 1977, concerning the application of P.A. 388 of 1976, the Campaign Finance Act, ("The Act") to an actual situation.

You state in your letter that you wish to donate the cost of printing tickets for the "Old Country Festival in Shiawasee County. You also state that the group which sponsors this festival is non-profit and uses the money it received for local service projects. You indicate that there would be no political message on the tickets, but that the tickets would identify you as donating the money for the cost of printing.

The question you ask the Department of State is how can you pay for the printing of the tickets and be certain that you are in compliance with the Act?

In your telephone conversation on July 11, 1977 you stated that you would pay for the tickets out of your campaign fund. This disbursement from your campaign fund would not be prohibited by the Act.

This response to your request for clarification of the campaign finance law regarding a particular factual situation may be regarded as informational only and not as a declaratory ruling since your request was not a declaratory ruling request.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:mc

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STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

July 28, 1977

Ms. Elvira Vogel
11437 Pleasant Lake Road
Manchester, Michigan 48158

Dear Ms. Vogel:

This is in response to your request for a declaratory ruling concerning P.A. 388 of 1976, ("The Act").

You state in your request that you are a member of the Washtenaw Intermediate Board of Education and that the members of that board of education are chosen by vote of the designated representatives of each constituent local board of education within the intermediate district pursuant to Section 614 of the Michigan School Code of 1976 rather than by popular election.

The Act defines "candidate" as an individual who is elected at a primary, general, special or millage election. School board members such as yourself are not elected at such elections. Consequently, school board members elected in the manner described above are not "candidates" within the purview of the Act.

This response to your request for a declaratory ruling may be regarded as informational only and not as a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918



August 9, 1977

Mr. Thomas C. Walsh, Chairman
City of Lansing
Charter Commission
City Hall
Lansing, Michigan

Dear Mr. Walsh:

This responds to your letter of April 27, 1977, regarding the legal status of the City of Lansing Charter Commission under P.A. 388 of 1976, commonly referred to as the Campaign Finance Act ("The Act").

Your letter asks two questions:

(1) Are the City of Lansing Charter Commissioners "candidates" as defined in the Act?

(2) Is the City of Lansing Charter Commission a "committee" under the Act?

Sec. 3(1) of the Act defines "candidate" as an individual who seeks "elective office". For purposes of this Act only, "candidate" includes an individual who is an "elected officeholder" of an "elective office."

"Elective Office" is defined in Section 5 as a public office filled by an "election" which "election" is a primary, general, special, or millage election.

The Home Rule Cities Act, P.A. 279 of 1909, as amended, authorizes the creation and structure of city charter commissions. In Section 18 (MCLA §117.18) it provides that all city charter commissioners must be elected. It further specifies in Section 26 (MCLA §117.26) that all elections conducted under the Home Rule Cities Act "shall be arranged for, held and conducted by the same officer and in the same manner as near as may be as general biennial fall elections." Factually, you state in your letter that the Lansing Charter Commission was elected in November, 1975.

Thus, Lansing City Charter Commissioners are "officeholders" of an "elective office" which is filled by an "election" as enumerated in the Act and, therefore, are also "candidates" subject to all the requirements and obligations of the Act.

The fact that under State law, the office of a charter commissioner is not permanent or that the office may terminate automatically is not material.

As to your second question, concerning whether the city charter commission is a "committee" as defined in the Act, Section 3(4) defines a "committee" as a "person" who receives money or spends money in the amount of $200.00 or more in a calendar year for the purpose of influencing, or attempting to influence the action of voters at an election.

"Person" is defined in Section 11(1) as including "any group of persons acting jointly." While the Charter Commission is a "person" as defined in the Act, it is not a "committee" unless it spends $200.00 or more in a calendar year to influence an election, which is not to imply that the Charter Commission may do so. Whether the Charter Commission in its official capacity may or may not spend private or public money to influence an election is a legal question which this Department is not authorized to answer.

Nonetheless, your letter states that the commission had not raised any funds and did not contemplate spending to influence the election on June 13. Therefore, under these circumstances, the commission is not a "committee."

In summary, each of the commissioners in the Lansing City Commission, in his or her own capacity, is a "candidate" under the terms of the Act because each commissioner is an "officeholder" of a public office filled by an election as delineated in the Act. However, with the above caveat, the commission or any other group is not a "committee" under the Act unless it should spend or receive $200.00 or more in a calendar year to influence an election.

This response relates to your request for an "administrative determination" but may be regarded as informational only and not as a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:mc

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MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 10, 1977

Mr. George J. Durak, Jr.
Ionia School Board Trustee
4307 East Riverside Drive
Lyons, Michigan 48851

Dear Mr. Durak:

This responds to your letter of July 19, 1977, requesting a declaratory ruling concerning P.A. 388 of 1976 ("The Act").

You state that you are a Trustee of the Ionia School Board and that you are "having problems" in filing your Statement of Organization.

It is the Department's understanding that your letter asks three questions. Succinctly stated, they are:

(1) Must you list a "bank" or other depository on your Statement of Organization if you have no contributions or expenditures?

(2) Was the due date of required filings changed to December 1, 1977?

(3) Is a declaratory ruling binding upon yourself and the county clerk?

As to your first question, the Department has determined that the Act requires that you must list a bank or other depository on your Statement of Organization but that you need not open an account at the listed depository unless you receive or expend money to influence your nomination or election.

As to your second question, the Attorney General, in a letter opinion to the Department dated June 8, 1977, has indicated that the late filing fees in the Act are considered penalties which are not in effect until December 1, 1977. However, the effective date of the penalties does not affect the date on which your Statement or Report is due.

The above questions upon which you request a declaratory ruling are actually questions of interpretation of the Act and not questions concerning the applicability of the Act to a particular factual situation. Declaratory rulings may only be made upon the latter and not upon questions seeking interpretations of the Act. Consequently, this letter should be considered informational as to

the interpretation(s) relied upon by the Department in its enforcement of the Act, and not a declaratory ruling. Therefore, it is unnecessary for the Department to answer your third question as to who would be bound by the requested declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

Opinion No. 5211

August 16, 1977

ELECTIONS:

Campaign financing act

STATE:

Preemption of a city charter provision

Although pursuant to its charter a city may enact an ordinance establishing campaign contribution reporting requirements for candidates for a city office, the state campaign financing act provides that such an ordinance may not establish more restrictive reporting requirements than the provisions contained in the act.

A city may not enact an ordinance which establishes campaign expenditure limitations for candidates for a city office.

Honorable Michael O'Brien

State Senator

The Capitol

Lansing, Michigan

You have requested my opinion on the following question:

> Has the newly enacted campaign financing act, 1976 PA 388; MCLA 169.201 et seq; MSA 4.1703(1) et seq, hereafter referred to as 'the Act', pre-empted the City of Detroit's authority to enact ordinances establishing campaign contribution reporting requirements and campaign expenditure limitations pursuant to Sec. 2-106 of the Detroit City Charter.

Section 2-106 of the Detroit City Charter provides in relevant part:

> 'Every elective officer or candidate for election shall make public all campaign contributions received by him or her, or on his or her behalf, and file or have filed a report or reports thereof as directed by ordinance. The city shall prescribe by ordinance uniform procedures for reporting campaign contributions and may set limits on campaign expenditures by candidates for elective city office.'

Although Sec. 2-106 of the Detroit City Charter requires all candidates for election to city offices to disclose all campaign contributions, the Act provides less restrictive disclosure requirements. The Act applies to all candidates for elective office. Section 3 of the Act. Under the Act the names of all contributors donating $20.01 or more must be

disclosed. Sections 26 and 29 of the Act. In addition, the total amount of contributions received from persons who contributed $20.00 or less must be disclosed, but the Act does not require the disclosure of the names of contributors of $20.00 or less.

Section 56 of the Act which restricts the power of local units of government to enact campaign financing ordinances or resolutions provides:

> 'A county, city, township, village, or school district may not adopt an ordinance or resolution that is more restrictive than the provisions contained in this Act.'

It is a general rule of law that ordinances or charters of home-rule cities may not be in conflict with the general law of the State, e.g., City of Grand Haven v Grocer's Cooperative Dairy Company, 330 Mich 694; 48 NW2d 362 (1951). Thus, an ordinance enacted by the City of Detroit which imposes more restrictive campaign contributions disclosure requirements is invalid because the ordinance would be in violation of section 56 of the Act. It is therefore my opinion that the City of Detroit may enact an ordinance which parallels the campaign disclosure requirements of the Act by requiring the disclosure of the names of campaign contributors who contribute in excess of a specified minimum amount which is greater than the $20.01 amount set forth in sections 26 and 29 of the Act. However, the ordinance may not require the disclosure of the names of campaign contributors who contribute less than $20.01.

It is also my opinion that the City of Detroit may not enact an ordinance which establishes campaign expenditure limitations for candidates for a city office. Although section 67 of the Act establishes campaign expenditure limitations, these limitations apply only to candidates who apply for monies from the State Campaign Fund. Section 62 of the Act. Only candidates for the Office of Governor or Lieutenant Governor are eligible for public financing. Section 3 of the Act.

Thus, the Act ties campaign expenditure limitations to public financing of elections. This tie-in is required if the campaign expenditure limitations are to be upheld. In Buckley v Valeo, 424 US 1; 96 S Ct 612; 46 L Ed 2d 659 (1976), the United States Supreme Court declared that the campaign expenditure limitations in the Federal Election Campaign Act of 1971, 18 USC 608 were unconstitutional on the ground that limitations on expenditures made for the purpose of securing the election or the defeat of a candidate impose substantial and direct restraints on the First Amendment rights of both candidates and citizens to political expression and association. However, the Supreme Court held that adherence to expenditure ceilings could be imposed as a precondition for the receipt of public financing, Buckley v Valeo, 424 US at 57, footnote 65. See also the Advisory Opinion on Constitutionality of 1975 PA 227 (questions 2-10), 396 Mich 465; 242 NW2d 3 (1976).

It is therefore my opinion that, although the City of Detroit may enact an ordinance establishing campaign contribution reporting requirements for candidates for a city office, the ordinance may not establish more restrictive reporting requirements than those set forth in the Act. In addition, the ordinance may not establish campaign expenditure limitations because expenditure limitations are constitutional only when they are imposed as a pre-condition for the acceptance of public campaign financing.

Frank J. Kelley

Attorney General

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918



September 2, 1977

Mr. John Dodge, President
Michigan Association of School Boards
421 W. Kalamazoo Street
Lansing, Michigan 48933

Dear Mr. Dodge:

This is in response to your letter of May 27, 1977, which set forth a number of questions concerning the new Campaign Finance Reporting Act, P.A. 388 of 1976 ("The Act").

Your letter asked seven questions:

1. Are the personal travel expenses of a candidate in an amount of less than $250 in a calendar year, provided without reimbursement, exempt from the definition of "contribution"?

2. May a candidate make an "independent expenditure" on his own behalf?

3. If a candidate committee neither receives nor expends money to influence an election, must the candidate committee open a bank account?

4. Would the candidate's personal postage used for mailing a required filing of the committee be considered an "expenditure"?

5. Must the money spent from a candidate's personal funds for campaign materials first be contributed to the candidate committee, deposited in the committee's bank account, and then withdrawn from the bank account?

6. When would a group of local citizens promoting a school millage campaign be considered a ballot question committee?

7. If an incumbent school board member having three years remaining in a term of office, indicates on the candidate committee's statement of organization that $500 is not expected to be exceeded in contributions nor expenditures per election and, in fact, the level of $500 is not exceeded, when would the first campaign statement be required of that candidate committee?

Your first question may be answered in the affirmative. It is the Department's view that the personal travel expenses of a candidate of less than $250 in a calendar year, provided voluntarily and without reimbursement, are exempt from the definition of "contribution" as provided by Section 4(3)(a) of the Act.

Your second question as to whether a candidate may make an "independent expenditure" on his own behalf creates an impossible hypothetical since Section 21(5) places the independent expenditure by a candidate in the control or direction of the candidate committee and the definition of independent expenditure in Section 9(1) prohibits this result. Therefore, a candidate may not make an independent expenditure on his own behalf.

The answer to your third question is that an actual bank account does not have to be opened if the candidate committee neither receives nor expends money for purposes of influencing an election. However, the committee must designate on its statement of organization a bank in which an account would be opened if expenditures were made or if contributions in the form of money, checks, or other negotiable instruments were received.

The fourth question in your letter may be answered affirmatively. A candidate's personal postage used for mailing a required filing of the committee is considered an "expenditure" by the candidate committee since postage for required filings would be considered as influencing the candidate's nomination or election.

In response to your fifth question, Section 21(5) of the Act would not require that money from a candidate's personal funds first be contributed to the candidate committee, deposited in the committee's bank account, and then withdrawn from the bank account. Section 21(5) defines an expenditure by the candidate, i.e., his contribution, as an expenditure made directly by the committee. The transaction would be recorded as a contribution by the candidate to the committee and as an expenditure by the committee, and reported accordingly.

With respect to your sixth question concerning when a group is considered a committee one must look to Section 3(4). This provision indicates a group is considered a committee when the group spends or receives $200 or more to influence an election. However, once it is considered a committee, the group must report all transactions from the time of its formation as provided in Section 25(1).

As to your last question, if an incumbent school board member, who has three years remaining in a term of office, indicates on his or her committee's statement of organization that over $500 is not expected in contributions or expenditures and, in fact, the level of $500 is not exceeded, the first required campaign finance statement would be the post-election statement due three years later.

These responses to your questions may be considered as informational only and not as comprising a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:mc

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 2, 1977

Mr. John D. Sawicki
Vice President
Stanley Sawicki & Sons, Inc.
1521 W. Lafayette
Detroit, Michigan 48216

Dear Mr. Sawicki:

This is in response to your two letters dated May 31, 1977, concerning campaign advertising under P.A. 388 of 1976 ("The Act"). Although you requested a declaratory ruling, the Department is responding pursuant to its authority, set forth in Section 47 of the Act and Rule 169.36 promulgated pursuant to the Act, to determine whether or not certain items may be exempted from an identification or disclaimer required by the Act.

You ask whether bumper stickers of the size 4" X 15" or smaller, and screen printed posters of the size 28" X 44" or smaller, are required to have printed on them the identification and disclaimer required by Section 47 of the Act and Rule 169.36.

The Department has determined that bumper stickers of the size 4" X 15" or smaller are exempt from the requirements of an identification or disclaimer as provided in the legal provisions cited above. However, the posters about which you inquired are not exempt.

The Department takes this opportunity, pursuant to Section 47 of the Act, and Rule 169.36, to identify certain additional items exempted from the required identification or disclaimer. They include the following:

1. ashtrays
2. brushes
3. badges & badge holders
4. bingo chips
5. combs
6. cigarette lighters
7. cups
8. clothing
9. clothes pins
10. coasters
11. earrings
12. emery boards
13. envelopes
14. erasers
15. golf tees
16. golf balls
17. drinking glasses
18. hats
19. horns
20. key rings

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 4891

September 2, 1977

Mr. John L. Damstra, Treasurer
Kent County Republican Committee
250 Michigan, N.E.
Grand Rapids, Michigan 49503

Dear Mr. Damstra:

This is in response to your letter of June 6, 1977, addressed to Mr. Bernard Apol, Director of the Elections Division, concerning the applicability of P.A. 388 of 1976 ("The Act") to certificates of deposit purchased by a political party committee.

You state in your letter that all funds received by the committee are deposited in the committee's official depository and that all expenses incurred by the committee are paid by check from this account or, as provided by law, from the petty cash fund. You also indicate that the committee has purchased certificates of deposit from a bank other than the official depository and that these certificates of deposit were purchased by check drawn on the official account of the committee.

The issue presented is whether a committee may transfer funds from the account in the official depository to a certificate of deposit or other interest bearing account in the same or in another financial institution.

Section 2(3) of the Act requires a committee to designate an account in a financial institution in this state as its official depository for the purpose of depositing all contributions which it receives and for the purpose of makin all expenditures. The Act mandates that all contributions and expenditures pass through one account at the designated official depository.

However, the Act in Section 28(1) contemplates that a committee may receive interest on an account consisting of funds belonging to the committee. The mere transfer of funds deposited in the official depository to an interest bearing account for investment purposes is not an "expenditure" as defined in Section 6 of the Act. Thus, the Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made.

In order to assure compliance with the reporting requirements of the Act and the funneling of all contributions and expenditures through one account at the official depository, the Department requires:

(1) That all funds transferred out of the designated official depository account to any savings account, certificate of deposit, or other interest bearing account be eventually transferred back into the official account.

(2) That no expenditures be made from any funds transferred to an account other than the official depository account.

(3) That any interest earned from an account consisting of funds belonging to the committee be reported timely on the required reports of the committee pursuant to Section 28(1).

(4) That the committee's supporting records for cash on hand reflect the cash balances in all accounts and all transfers of funds between these accounts.

(5) That the committee's required reporting for cash on hand reflect the cash balances in all accounts consisting of funds belonging to the committee.

This response constitutes a declaratory ruling concerning the application of the Act to the specific factual situation set forth in your letter.

Very truly yours,

Richard H. Austin
Secretary of State

RHA:mc

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE
LANSING
MICHIGAN 48918

September 8, 1977

Ms. Georgia M. Boewe, Treasurer
Committee for the Re-election of
Ted Bates, Mayor
P.O. Box 55
Warren, Michigan 48090

Dear Ms. Boewe:

This is in response to your letter of June 28, 1977, concerning political advertising under P.A. 388 of 1976 ("The Act").

You ask two questions:

(1) Must a printed political advertisement, which is normally not exempted from the requirements of the identification or disclaimer provisions set forth in Section 47 of the Act (MCLA §169.247), have an identification or disclaimer if the advertisement was printed prior to the effective date, June 1, 1977, of those requirements?

(2) What is the size of the print for the wording of the identification or disclaimer required on printed political advertisements?

In addition, the Department takes the opportunity afforded by your inquiries to answer the following two related questions which are of concern:

(3) What is the precise form in which an identification or disclaimer must appear?

(4) Must stationery used by a committee bear the identification as required by Section 47 of the Act?

As to your first question, the Department has determined, in its role as principal administrator and supervisor of the provisions of the Act, that political advertisements printed prior to June 1, 1977, need not include an identification or disclaimer. However, beginning December 1, 1977, all political advertisements must bear the identification or disclaimer required by Section 47 and Rule 169.36, promulgated pursuant to the Act, unless otherwise exempted. It should be emphasized that after December 1, 1977, the individual, group, or committee making use of the printed matter must indicate thereon its current name and address, and not that of the person who paid for the material prior to June 1, 1977, unless of course, the individual, group, or committee remains the same. It is also important to note this determination does not pertain to political advertisements purchased after June 1, 1977; the latter are required to bear an identification or disclaimer unless specifically exempted.

Concerning your second question as to the size of print for an identification or disclaimer, Rule 169.36 states printed political advertisements shall bear the identification or disclaimer "in a place and in a print clearly visible to and readable by an observer." It is recognized this rule governs information on a disparate variety of printed material, including but not limited to, billboards, placards, posters, and yard signs. Moreover, it is readily noted that display of the printed matter varies considerably. For example, a yard sign may be placed on the wall of a building, at some distance from viewers, as well as on a lawn near a walkway, which is the more customary usage.

For this reason, the rule stresses the placement of the identification or disclaimer, and the legibility of the print, rather than offering a complicated formula which attempts to anticipate every type of printed matter and every manner in which the printed material will be displayed. In short, an identification or disclaimer must: (1) appear on printed political material, unless the material is otherwise exempted; (2) be distinguishable from other information appearing in the advertisement; and (3) be set forth in legible type.

Turning to the third question, which was not raised in your letter but which is related, the Department has determined the identification required by Section 47 must include the words "Paid for by" followed by the full name of the person paying for the material. If the purchaser is a committee, the full name of the committee must be stated. The identification must also state the person's street address including the street number or post office box, city or town, state, and zip code. A disclaimer shall be in the same form as an identification except that the Act requires it to be preceded by "Not authorized by the candidate committee of (candidate's name)."

With respect to the question concerning stationery, the Department has determined printed latter paper must bear the identification or disclaimer set forth above. This is true notwithstanding the fact the paper bears a letterhead. Printed envelopes, however, are exempted from the identification or disclaimer requirement pursuant to the provisions of Section 47 of the Act and Rule 169.36.

Sincerely,

Richard H. Austin
Secretary of State

RHA:mc

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

September 12, 1977

Mr. Lynn D. Allen
Oakland County Clerk - Register of Deeds
Pontiac, Michigan 48053

Attention: Howard Altman
Director of Elections

Dear Mr. Allen:

This is in response to your letter of August 16, 1977, concerning the reporting requirements of a nonpartisan candidate in a primary election pursuant to P.A. 388 of 1976 ("The Act").

You ask whether nonpartisan candidate committees in order to be in compliance with the Act, must file campaign statements for a primary election where there are not more than twice the number of candidates as there are individuals to be elected for a particular public office.

Sec. 33(1) of the Act mandates that a candidate committee file campaign statements for an election. "Election" is defined in Sec. 5(1) of the Act as including a primary election.

The statute dispositive of this question is Section 540 of the Election Law (MCLA 168.540) which states:

> "If, upon the expiration of the time for filing petitions for any nonpartisan primary election, it shall appear that as to any office on any nonpartisan ticket there are not to exceed twice the number of candidates as there are persons to be elected, then the officer with whom such petitions are filed shall certify to the proper board of election commissioners the names of such candidates whose petitions have been properly filed and such candidates shall be the nominees for such offices and shall be so certified. As to such offices, there shall be no primary election and such offices shall be omitted from the primary ballot." (Emphasis added)

Accordingly, where there is no primary election for a non-partisan office pursuant to the above statutory provision, a nonpartisan candidate committee is not required to file campaign statements for the primary election even though voting for other officers or issues may take place. Of course, this conclusion does not exempt

nonpartisan candidates from any report or statement required by the Act when an election occurs. It should be emphasized also that the period covered by a campaign statement runs from the day following the closing date of the last report and ends with the closing date of the most recently required report. Therefore, contributions received and expenditures made during the period identified previously, must be reported in the next required report, which in all probability, will be the preelection campaign statement for the general election.

This response may be regarded an informational and not as a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:mc

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

September 13, 1977

Mr. Zolton Ferency
P.O. Box 20
East Lansing, Michigan 48823

Dear Mr. Ferency:

This is in response to your request for a declaratory ruling concerning the application of P.A. 388 of 1976 ("The Act") to a contribution of less than $20.01 made to your gubernatorial candidate committee, accompanied by a document signed by the contributor indicating he had made a contribution of money.

You state that on August 5, 1977, your committee received a campaign contribution of $5.00 in the form of a U.S. Federal Reserve Note from Fr. Clement J. Kern, 1050 Porter Street, Detroit, Michigan 48226. Accompanying the contribution was a card signed by the contributor, who indicated his occupation and the fact he was making a contribution of money.

The issue presented is whether the above circumstances constitute a "qualifying contribution" as defined in Section 12(1) of the Act. This provision defines contributions to gubernatorial candidate committees which are eligible for matching with monies from the state campaign fund.

Section 12(1) indicates a "qualifying contribution" is a "contribution of money made by a written instrument." It is clear from the quoted section a contribution must be made by a "written instrument" in order to constitute a "qualifying contribution" so as to be potentially eligible for matching state funds provided in the Act for gubernatorial candidates.

The Legislature has not defined "written instrument" in the Act. An examination of diverse legal resource materials reveals definitions for "written instrument" similar to the one found in Black's Law Dictionary, i.e., "something reduced to writing as a means of evidence, and as the means of giving formal expression to some act or contract."

Accordingly, since the contributor you mentioned "reduced to writing" his action of making a contribution of money, "as a means of evidence, and as a means of formal expression," it is the determination of the Department that the circumstances mentioned, with the additional requirements listed below, will constitute a "qualifying contribution."

The Department shall demand that a document in order to be acceptable for purposes of Section 12(1) of the Act must clearly contain the names of the payor, payee, the amount, the date, the purpose of the contribution, and the signature of the contributor. A cash contribution unaccompanied by a written document will not be allowed as a "qualifying contribution." It should be noted further the above determination is applicable only to contributions of $20.00 or less. Section 41(1) of the Act prohibits the acceptance in cash of any contribution of $20.01 or more.

This response constitutes a declaratory ruling concerning the application of the Act to the specific factual situation set forth in your letter.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/s

Thus, the Department finds that NBD, being a national bank, is not prohibited from establishing its own separate segregated fund for purposes of influencing Michigan elections. Therefore, your committee which administers this fund is not prohibited from making contributions and expenditures in this State pursuant to the Act.

Although Section 55 of the Act is silent with respect to national banks and their funds, these entities are not excluded from all other provisions of the Act, unless otherwise provided. For example, a fund sponsored by a national bank is subject to filing statements and reports, record keeping, and limitations of the Act. A national bank, like all corporations, is prohibited from making expenditures as provided by Section 54 of the Act.

In conclusion, the Act does not prohibit a national bank formed under the laws of the United States from making disbursements for the establishment, administration, or solicitation of contributions to its own separate segregated fund for political purposes in Michigan.

This response constitutes a declaratory ruling concerning the applicability of the Act to the statement of facts in your request.

Very truly yours,

Richard H. Austin
Secretary of State

RHA:ja

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN, SECRETARY OF STATE
STATE TREASURY BUILDING
LANSING
MICHIGAN 48918

November 10, 1977

Mr. James R. Killeen
Wayne County Clerk
Office of the County Clerk
201 City-County Bldg.
Detroit, Michigan 48226

Dear Mr. Killeen:

Attention: Mr. Orville L. Tungate
Chief Deputy County Clerk

In your letter of October 28, 1977, you raised several questions concerning the effective date of penalty provisions as provided in Section 82(1) of Act 388 of the Public Acts of 1976 ("the Act"). The thrust of your several questions is as follows:

(1) Are all penalty provisions of the Act effective December 1, 1977?

(2) Are reports due prior to December 1, 1977, subject to all penalty provisions of the Act?

(3) Is the person who fails to file a report due prior to December 1, 1977, assessed the monetary penalty from the date the report was due or from December 1, 1977?

(4) Is a person who has not filed a report required prior to December 1, 1977, subject to the criminal provisions of the Act prior to that date? For example, if a person has not filed a statement of organization due prior to November 1, 1977, is that person guilty of a misdemeanor as of December 1, 1977?

(5) If more than one report is due from the same political committee, is each report due from that committee subject to the penalty provisions?

In view of the fact civil and criminal penalties are involved, these questions have been referred to the Attorney General for his opinion. It is anticipated his legal advice will be forthcoming in the near future.

Pending legal resolution of these questions by the Attorney General, the Department of State, as a filing official and principal supervisory authority under the Act, has interpreted the Act with respect to implementation of penalties. Permit me to indicate the Department's position as it relates to each of your questions in the order raised.

The penalty provisions of the Act are effective as of December 1, 1977. However, some reports will not be due until after December 1, e. g., annual campaign statements required pursuant to Section 35(1) of the Act. Consequently, the penalties in this instance will not be applicable until after the filing deadline.

With respect to the second question, reports due prior to December 1, 1977, are subject to the penalty provisions of the Act. However, penalties will be applied consistent with the responses given in the succeeding questions.

Concerning your third question, a person who fails to file a report due prior to December 1, 1977, will be assessed the monetary penalty from December 1, 1977.

In the case of the fourth question, a person who has not filed a report required prior to December 1, 1977, will not be subject to criminal provisions of the Act until the requisite number of days have elapsed after December 1. In the example cited in the question, a person who has not filed a statement of organization due prior to November 1, 1977, will be guilty of a misdemeanor as of December 31, 1977, if the report remains unfiled as of that date.

The fifth question is answered in the affirmative. The diverse reports are filed under various sections of the Act, e. g., Sections 24(1), 24(3), 33(3) and 34(3). Examination of these sections indicates that each provision sets forth a requirement, the violation of which may result in the imposition of prescribed penalties.

In addition to the above questions, you also asked the following query:

> What is the full force and effect of the May 27, 1977, communication from the State Department of Treasury to all County Clerks and Treasurers?

The communication to which you refer is a written memorandum from Emil E. Tahvonen, Director of Local Government Audit Division, State Department of Treasury, to all County Clerks and Treasurers. The memorandum implements a procedure for the collection, accounting and disposition of late filing fees required by the Act. The procedure is established pursuant to R 169.4 of the General Rules promulgated by the Secretary of State pursuant to authority conferred by Section 15 of the Act. The administrative rule has the full effect of law. Therefore, the implementing procedure as outlined in Mr. Tahvonen's memorandum must be followed accordingly.

As indicated above, the final legal disposition to the matters raised in the first five questions will be provided by the Attorney General. The interpretation set forth in this response may be considered informational and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk